

### **REMARKS**

The Examiner has rejected Claims 1-3, and 5 under 35 U.S.C. §102(b) as anticipated, and has rejected Claims 1,5,6-12, and 21-24 under 35 U.S.C. §103 (a) as rendered obvious, by the disclosure of U.S. Letters Patent No., 5,633,003, issued to Cantor ("Cantor").

Without comment as to the propriety of the rejections, the Applicant has either canceled the rejected claims, amended the rejected claims, and/or added new claims, to incorporate the elements and limitations the Examiner deemed conferred patentability. Given these amendments and additions, Applicants submit that all pending claims are allowable, no new matter has been added, and that all grounds for rejection have been obviated. A detailed discussion of the claim amendments follows.

Applicant has canceled claims 1-4, 13, 25, and 28-29. Elements of these claims have been incorporated into new claims 34-36. As to Claim 34, Applicants have rewritten claims 1-3 in independent form to eliminate hyaluronic acid. As the Examiner construes the disclosure of Cantor to anticipate therapeutic use of hyaluronic acid, although Applicants careful reading of Cantor reveals no reference to binding or protecting elastic fibers in the sections of Cantor the Examiner references, the reference to specific polysaccharides not disclosed in Cantor obviates the rejection. Moreover, Cantor contains no suggestion, motivation or other disclosure regarding use of these specific polysaccharides in the treatment disclosed therein. As such, Cantor neither anticipates nor renders obvious new Claim 34.

New Claim 35 rewrites claim 4, adding a further limitation as to effective molecular weight. The limitation finds support in the specification at page 52, and elsewhere in the specification. As such, the claim adds no new matter.

New Claim 36 rewrites Claims 1 and 13, limiting the polysaccharide to “chemically modified” polysaccharides. As the Examiner allowed claim 13, which references a “chemically modified” polysaccharide, Applicants submit new Claim 36 is also allowable.

Claim 21 has been amended to identify the formulation as further comprising a drug, thus incorporating the limitation of claim 25, which claim was allowed by the Examiner. Claims 28-29 have been consolidated in claim 26, which claim now depends from claim 21. No new matter has been added, and all amendments derive from original claims, therefore they find support in the application as filed.

Other amendments to the claims adjust their dependency from particular claims, in view of the new claims added.

Applicants also wish to comment briefly on the Examiner’s pronouncement that “Applicant does not get the benefit of priority date of its parent application”, given the supposed lack of support for the term “respiratory disorders” (Final Office Action, page 6). Applicant is unsure of the significance or meaning of this pronouncement. For instance, original Claims 21-33 do not reference “respiratory disorders” at all. Moreover, Claim 1, along with those claims ultimately depending from this claim, recites this term in the preamble, and the Examiner provides no basis for his implicit assertion that this terminology should be read as a claim limitation. In any event, Applicants submit that the Examiner’s pronouncement is moot, given the amendments. Claim 34, from which claims 5-12 now depend, claims a “lung treatment” in its preamble, use of which term is supported by the disclosure in U.S. Patent No. 6,391,831.


Applicant submits that all issues raised by the Examiner have been addressed by both the amendments to the claims and in this discussion. Consequently, the application as amended appears to be in condition for allowance and such action is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 2, 2004.



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